

C O U N T Y O F Y O R K
DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between TRIBEK PROPERTIES (a North Carolina Corporation) hereinafter referred to as the "Developer," and the COUNTY OF YORK, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "County,"

W I T N E S S E T H:

WHEREAS, the Developer is the prospective developer of a certain parcel of land located in the County, bearing Assessor's Parcel Number 037-43, hereinafter referred to as the "Property;" and

WHEREAS, the Property is proposed to developed by the Developer into a project, as generally depicted on a conceptual plan submitted by the Developer and entitled "Proposed Victory Boulevard Improvements," that will include a drugstore and a sit-down restaurant or a hotel, all of which are permitted uses under the property's current GB-General Business zoning classification; and

WHEREAS, the Developer has requested that the York County Board of Supervisors support and endorse his desire to obtain approval from the Commonwealth Transportation Board (CTB) for installation of an "access break" to allow construction of a right-in/right-out commercial entrance ("the entrance") on Route 171 (Victory Boulevard) to serve the proposed development, and the Board of Supervisors on _____, 2005, adopted such a resolution (Resolution R05-_____) with the proviso that it shall be transmitted to the CTB only at such time as the Developer shall execute this agreement and post the Surety described herein; and

WHEREAS, to facilitate the flow of traffic on Route 171 the developer has proposed to install, at the developer's expense, approximately 1,970 linear feet of roadway, the purpose of which is to create a third westbound travel lane on Route 171, beginning at a point 300 feet east of the Route 134/Route 171 intersection and ending at the point where the existing third through/left-turn lane begins on the east side of the Route 17/171

intersection (hereinafter referred to as "the Route 171 Improvements", or simply the "Improvements"); and

WHEREAS, such construction would be in addition to such turning lanes/acceleration lanes as are required by the Virginia Department of Transportation to serve the development's entrance on Route 17 (also a right-in/right-out) and on Route 171, if approved by the Commonwealth Transportation Board, but Developer has determined that the Route 171 Improvements would serve the Developer's interests and Developer accordingly volunteers to construct the Route 171 Improvements as set out herein; and

WHEREAS, the Developer has submitted to the County herewith (circle one of the following) sufficient letter of credit, cash, or a certified check, in the amount of \$_____, hereinafter referred to as the "Surety", securing the timely construction and completion of the proposed Route 171 Improvements and performance of the terms and conditions of this Agreement; and

WHEREAS, the County has agreed that upon execution of this Agreement and submission to the County of the Surety, Resolution R05-___ will be transmitted to the CTB for official consideration

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

1. The County agrees that, upon proper execution of this Agreement by the Developer and receipt of the Surety, the County will transmit the referenced Resolution R05-___ expressing support for the proposed Route 171 Improvements to the Virginia Department of Transportation (VDOT) and the CTB with a request that it be officially considered. If the Surety is a letter of credit, it must be in the form attached as Exhibit A and completed in conformance with the instructions attached thereto, approved by the County Attorney as to form, content and issuing institution, and acceptable as to amount, effective period, and otherwise to the County Administrator. The parties agree that the Surety for the Route 171 Improvements shall be in addition to, and not in lieu of, any

similar surety that may be required for the development of the Property under applicable County ordinances.

2. The Developer agrees that the Developer will, without cost to the County, on or before the issuance of a Certificate of Occupancy for any building constructed on the subject property, construct and complete the Route 171 Improvements to the satisfaction of and to the standards and specifications of the Virginia Department of Transportation.

The Developer further agrees that:

- a. The County will not approve a site plan for development of the subject Property as described above (such development of the subject Property being referred to sometimes by the uncapitalized term "improvements") that includes any vehicular access onto Route 171 unless and until the Developer has prepared and secured Virginia Department of Transportation approval for the construction plans and bid documents associated with the proposed Route 171 Improvements ; and
- b. The County will not issue a Building Permit for structures or other improvements on the subject Property as depicted on said site plan unless and until the Developer provides evidence and documentation that a contract has been executed for the construction of the Route 171 Improvements; and
- c. Construction of the Route 171 Improvements shall be commenced no later than thirty (30) days after the issuance of the first Building Permit for improvements on the subject Property, and shall be completed in any event no later than ____ days after construction of the Route 171 Improvements has commenced; and

- d. The Route 171 access shall not be used for construction traffic access during the course of development of the subject Property and that all construction-related access shall be from the Route 17 access drive; and
 - e. The Developer shall maintain the required Surety in full force and effect and, if a letter of credit, shall provide renewals therefore at least sixty (60) days in advance of the then current term/date of expiration; and
 - f. The Developer's construction of the Route 171 Improvements shall include the installation of such upgraded/enlarged culvert as the County and VDOT determine to be necessary and appropriate for compatibility with the County's established Revenue Sharing Program project (No. 0171-099-R07; UPC: 58456) to enhance the drainage capacity under Route 171; and
 - g. The Developer shall be obligated to replace at its expense, to the extent allowed by VDOT, any median landscaping displaced by the installation of the Route 171 Improvements
3. The County may draw on the Surety and complete the Route 171 Improvements in the following events:
- a. The Developer fails to complete the Route 171 Improvements as specified in paragraph 2 above.
 - b. The Developer fails to commence construction of the Route 171 Improvements as specified in paragraph 2 above.
 - c. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Developer.

- d. The commencement of a foreclosure proceeding of a lien against the Property or its conveyance in lieu of foreclosure.
 - e. Developer breaches any of the terms and conditions of this Agreement, including the failure to provide a renewed/extended Letter of Credit at least sixty (60) days in advance of the date of expiration.
4. The following events shall be considered appropriate cause for the Developer to request release of the Surety required by this Agreement, provided however in each event that no construction of the Route 171 Improvements shall have commenced:
- a. Failure of the Commonwealth Transportation Board to approve the requested right-in/right-out access break.
 - b. Failure of the Walgreens site selection committee to approve this site for development as proposed, as documented in writing by the Developer.
 - c. Written request of the Developer to withdraw and cancel any consideration of the site plan for the proposed development.

Should the Developer exercise any of these options, the County agrees to release the Surety and will not consider the Developer to be in default. However, if under any circumstances construction of any portion of the Route 171 Improvements shall have commenced, Developer shall remain obligated to complete such Improvements, and the County shall retain the Surety to ensure completion of the Improvements.

The parties agree that if site plan review is suspended at the request of the Developer, it will not be resumed by the County unless and until the Developer re-establishes the required Surety.

- 5 In the event that the County draws on the Surety, it may use such funds to complete the

construction of the Route 171 Improvements or cause them to be completed. The Developer shall be liable to the County for any and all costs of completing the Route 171 Improvements which shall be in excess of the Surety. It is the purpose and intent of the parties that the amount of the Surety shall have been determined to be sufficient to defray not only the anticipated cost of completing or having completed the Route 171 Improvements but also unanticipated cost overruns, the cost incurred by the County in drawing on the Surety, an administrative fee in the amount of \$5,000.00, or five (5) percent of the amount of the cost of completing the Route 171 Improvements, whichever sum is greater, and any and all other reasonable costs which the County has incurred or may conclude, in its sole discretion, are to be incurred. The Developer hereby acknowledges that an administrative fee in the above amount is reasonable compensation to the County for its costs in drawing on the Surety and, when necessary, causing the Route 171 Improvements to be completed. The Developer acknowledges and agrees that the County is under no obligation to give any notice to the Developer of its intent to draw on the Surety in any of the events specified in this Agreement.

6. The County shall, upon drawing on the Surety, deposit the same in an interest-bearing account to the extent not needed to cover expenditures made or reasonably anticipated to be made in the near future, but the County shall have no responsibility to deposit or maintain any of such funds in an account at the maximum interest available. Upon completion of the Route 171 Improvements, as determined by the County, and payment of all expenses incurred by the County in connection therewith, any unexpended funds, including any interest earned thereon, shall be returned to the Developer.
7. The County shall not be liable to the Developer or to any third party for the manner in which the Route 171 Improvements are completed, any delay in effecting completion, the fact that

the cost of completion is in excess of or less than the amount made available by drawing on the Surety or any part thereof, or that the County has drawn down the entire amount of the Surety even though it subsequently develops that the entire amount was not required to carry out the provisions of this Agreement.

8. The Developer acknowledges that the County is under no obligation to extend the time herein provided for completion of the Route 171 Improvements by the Developer. However, in the event that the County unilaterally agrees in writing to do so, such writing shall, without more and without formal execution of any other agreement by the parties, constitute such an extension, and all of the terms of this Agreement shall continue in effect for the duration of such extension insofar as they are not inconsistent with the terms of the extension; provided, however, that no extension shall be effective until or unless the Developer furnishes to the County a new or amended Surety acceptable to the County if requested by the County. The County may require that the amount of the Surety be increased if an extension is permitted.
9. It is mutually understood and agreed that if the Developer shall faithfully execute all requirements of this Agreement and all relevant laws and regulations, and shall indemnify, protect and save the County, its officers, agents and employees harmless from all loss, damage, expense or cost by reason of any claim made or suit or action instituted against the County, its officers, agents or employees on account of or in consequence of any breach on the part of the Developer, all of which the Developer hereby covenants to do, then the aforementioned Surety shall be released by the County to the Developer; provided, however, that release of the Surety shall not in any way or to any extent release, diminish or otherwise reduce any obligation or

liability of the Developer provided in this Agreement.

10. This Agreement shall be binding upon the Developer and the Developer's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals:

DEVELOPER:

* * * * *

INDIVIDUAL OR INDIVIDUALS

_____(SEAL)

_____(SEAL)

* * * * *

CORPORATION

Attest: By: _____(SEAL)

President (Attach copy
of corporate resolution
authorizing execution)

Secretary

* * * * *

PARTNERSHIP

By: _____(SEAL)

General Partner

* * * * *

Approved as to form:

County Attorney

COUNTY OF YORK, Virginia

By: _____

County Administrator